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| To | Pam Barclay | Date | 10/12 |
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October 12, 2006

BY FAX

Ms. Pamela Barclay
Maryland Health Care Commission
4160 Patterson Avenue
Baltimore, Maryland 21215

Re: Comments

Dear Ms. Potter:

On behalf of Louis Grimmel, CEO, I attach Lorien Health Systems' Comments on the Proposed Revisions to the SHP.

Thank you for considering his views.

Very truly yours,

James A Forsyth

JAMES A. FORSYTH
Attorney for Lorien Health Systems

JAF/met

cc: Louis G. Grimmel

# LORIEN HEALTH SYSTEM COMMENTS ON PROPOSED REVISIONS TO SHP FOR FACILITIES AND SERVICES: NURSING HOME AND HOME HEALTH AGENCY SERVICES

## Overview:

Lorien Health Systems ('Lorien') appreciates the opportunity to comment upon the Draft Changes to the Long Term Care Services Chapter of the State Health Plan ('SHP').

We are a provider of long term care services and have operated freestanding nursing homes in Central Maryland, as well as Harmony Hall, a freestanding assisted living facility located in Columbia, Howard County. During the past ten years, Lorien has focused on renovating and down-sizing existing physical plant and developing a new model of care which combines smaller scale nursing facilities attached to separately-licensed assisted living facilities. Our objective has been to better serve the changing needs of the population and health care system while also offering efficient facilities that foster 'aging in place' and community-based alternatives to nursing home placements and inpatient institutionalization.

Lorien supports the work MHCC Staff has undertaken to develop policies and rules/standards that reflect the needs of the population in today's evolving health care system. Lorien also supports the deletion of a number of duplicative or unnecessary rules /standards, and the modification of a number of others. However, Lorien believes that the proposed revisions to several others incorporate new excessively burdensome requirements without justification, and result in micro-management of the industry. Further, these revisions may frustrates providers' ability to meet the demands of the current health care environment .

Our detailed comments are as follows:

## Nursing Homes

1. **Policy 1.0 - Physical Plant Age and Design**: Lorien agrees with this policy as a general statement. But the policy statement does not discuss how the MHCC intends to perform this assessment or the standards by which it will be undertaken.

It appears that Staff seeks to implement this policy simply by imposing new onerous and ill-defined burdens on CON applicants to justify their designs, including 'literature searches' and evaluations of an undefined 'therapeutic milieu' (*see Standard .05 A (7) Facility and Unit Design*). Since regulatory standards for facility and unit design are promulgated by the Office of Health Care Quality and the State Architect, Lorien believes that the MHCC not duplicate regulatory burdens. Rather, the MHCC should properly implement Policy 1.0 by convening an Interagency Work Group with those agencies which already have the required level of expertise. This would result in

uniform requirements, rather than requiring applicants to justify particular plant designs on a case-by-case basis.

2. **Policy 1.1 Transfer and Partnership Agreements:** The SHP already has a CON review standard which requires facilities to have written transfer/referral agreements with other providers of these services, as is also required by OHCQ. The proposed revision now adds language that appears to impose a new requirement that nursing homes enter into partnerships with "other types of settings". This language should be modified to clarify that legal partnership agreements are not required and that transfer/referral agreements are all that are required. Further, language should be added which states that the MHCC supports legislation that would lift restrictive CON barriers that preclude nursing homes from directly offering hospice and home health agency services.

3. **Policy 4.0 Innovative Programs:** This policy states the MHCC will work with CON applicants to encourage development of innovative programs. The discussion cites examples such as the cited Eden Alternative, Wellspring, and Green House Project. However, Lorien notes that the changing health care environment dictates that applicants also have flexibility to design their facilites in a way that best meets the needs of the resident population they expect to serve. For example, facilities intended to serve a larger number of short stay, rehabilitative residents should not be penalyzed for proposing designs that empahasize the medical model.

In addition, the policy of working with applicants in the CON process would appear to be impractical at that stage. Rather, as noted with respect to Policy 1.0, the MHCC should convene an Interagency Work Group with those agencies which already have the required level of expertise regarding design and regulatory compliance.

Further, to encourage *any* innovative approach, the MHCC should de-emphasize considerations of the potential impact of proposed projects on existing providers within the jurisdiction, or on occupancy rates. This will encourage the replacement of obsolete plants and designs.

Finally, any policy must acknowledge that providers must work within the constraints of an already strained reimbursement system.

3. **Section .04B(1)(b)(ii) - Licensable Physical Space:** The waiver bed provisions were originally included in the SHP to allow providers to add small incremental increases to bed complements without the necessity of submitting to the time consuming and expensive CON process. The inclusion of this exemption rests upon the

acknowledgment that providers are the best judges of the resources needed to meet the needs of their particular service area. The above restriction appears to be a new rule designed to prohibit the addition of minor waiver bed increments in the event existing space needs to be renovated or minor construction is needed to create the space. As such, it appears only existing resident rooms could be converted to accommodate the additional waiver beds. Lorien opposes promulgation of this rule and believes it unfairly hampers providers in their ability to meet changing needs.

4. **Section .04D - Relocation of Never Licensed, CON-Approved Beds:** Lorien opposes this rule which requires applicants to meet the burden of proving continuing need when CON-approved but unbuilt beds are proposed to be re-located. Development is becoming increasingly difficult in Maryland for a wide range of reasons ranging from practical building moritoria due to water shortages, NIMBY-sim, and the complexity of land use approvals. Providers should not be forced to lose substantial investments in bringing projects to fruition as a result of a proposed site relocation which may be undertaken to resolve development problems at the original site. At the very least, this rule should be amended to apply only to beds which were previously approved more than 5 years earlier.

5. **Section .04E - Effective Date:** Lorien believes that this provision should be amended to provide that the revisions shall ***not*** apply to the initial CON review of projects for which Letters of Intent were filed or Applications submitted prior to the final adoption of the revised regulations. Otherwise, existing applicants will be required to meet new requirements which differ from those in place when the applications were filed and undergo delays in the review of their applications.

6. **Section .05A(2) - Medical Assistance Participation:** Lorien has previously submitted its views through our participation in the Work Group, and has opposed requirements at odds with the need to shorten lengths of stay and discharges to community settings. The MHCC has determined to continue the MOU with its mandated Medicaid Participation Rate. Lorien supports the reduction of the mandated rate per the revised methodology as an incremental step in removing this internal contradiction. Lorien also states the language should be revised to note that the new jurisdictional percentages should also be applied to facilities which have ore-existing MOUs using the prior participation rate so that consistency and fairness of treatment is achieved.

7. **Section .05A(3) - Community-Based Services:** Lorien opposes the revisions which require applicants to submit documentation as described in subsections (a), (b), and (d). There is no rationale for now requiring documentation in lieu of having written policies to the same effect. Lorien believes this is inappropriate micro-management of the

industry's operation which, further, serves no other purpose than to increase the complexity, expense, and length of the CON process.

8. **Section .05A(4) - Nonelderly Residents:** Lorien objects to the new documentation requirements on the same grounds as noted in paragraph 7, above.

9. **Section .05A(7)(b) and (c) - Facility and Unit Design:** Lorien opposes the proposed requirement that applicants produce documentation from 'the literature' regarding building design. Such literature favors particular designs, features or philosophies that another provider does not necessarily share. Further, the proposed standard lacks any specifics to give applicants guidance as to what is acceptable. Lorien believes that the MHCC should not regulate facility design since this is currently regulated by OHCQ and the State Architect. As noted above at p.1 regarding Policy 1.0, Lorien believes the MHCC should instead convene an Interagency Work Group with those agencies which already have the required level of expertise regarding design requirements. This would result in uniform requirements, rather than requiring applicants to justify particular plant designs on a case-by-case basis.

10. **Section .05B(1)(a) - Bed Need:** Lorien opposes this standard since applicants should be entitled to rely upon the projections set forth in the State Health Plan Bed Need Methodology.

11. **Section .05B(1)(b) - Bed Need; Relocation:** Lorien opposes this standard since it is a disincentive to replace obsolete facilities. The subject beds are already in the bed inventory and it makes no sense to jeopardize the continued operation in a modern new facility.

12. **Section .05B(3) - Jurisdictional Occupancy:** Lorien opposes this standard since it is a disincentive to replace obsolete facilities or to create innovative models.

13. **Section .05B(5) - Quality:** Lorien states that the proposed revision should be amended to include language which makes clear that approval is not precluded by an outstanding Level G deficiency as long as the provider is addressing the issue with the OHCQ and that the process has not yet concluded.

14. **Section .05B(6) - Location:** Lorien opposes the revision since a new site location is not always linked to the issue of better serving residents than the current location. For example, a relocation to a new site may be undertaken so as to accommodate a new, modern facility.

**Home Health Agency Services**

Lorien urges that the MHCC support legislation that would lift restrictive CON barriers that preclude nursing homes or systems which provide integrated long term care services from directly offering home health agency services.